

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

April 17, 2003

A meeting of the Board of Environmental Protection was held on Thursday, April 17, 2003, at the Holiday Inn / Ground Round facility in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 10:00 a.m. with the following individuals present:

**Board:** Katharine Littlefield, John Tewhey, Virginia Plummer, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and Irving Faunce

**Absent:** John Marsh, Melford Pelletier and Ernest Hilton

<b><u>Staff:</u></b>	<u>Bureau of Air Quality</u>	Bryce Sproul
	<u>Bureau of Air Quality</u>	Marc Cone
	<u>Bureau of Land and Water Quality</u>	Susan Davies

**Others:** Brooke Barnes, Deputy Commissioner  
Dennis Harnish, Assistant Attorney General  
Cynthia S. Bertocci, Executive Analyst  
Terry Hanson, Administrative Assistant

*(Meeting adjourned at approximately 4:30 p.m.)*

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Brooke Barnes, Deputy Commissioner reported the following:

Legislation:

*Overboard Discharge (OBD):* The bill dealing with the OBD program was revised and voted “ought to pass” out of committee. This bill requires all grant monies to be needs tested, requires an evaluation of alternatives with each property transfer, and provides for a fee increase to implement the program.

*Sand Dune Rule:* Two bills addressing changes to the Coastal Sand Dune Rules were considered by the Natural Resource Committee. The bill that would expand opportunities to construct in a dune area was voted out “ought not to pass” with the condition that the Department provide a letter to the City of Saco regarding maintenance of the Camp Ellis area until completion of the Army Corps. study. The second bill was modified making the revisions to the Coastal Sand Dune Rules major substantive thus requiring the Board to provisionally adopt the rule and forward it to the Legislature for review and approval.

*Dioxin:* The Department submitted a bill to change a couple of dates in statute. Currently industry has a specific timeframe to demonstrate compliance following a reported failure to pass the test for concentrations of dioxin in fish above and below paper mills. The Department sought a time extension for the mills to demonstrate compliance. The second change was to seek an extension on the due date of the comprehensive report. Because the Department is still waiting for lab results from the 2002 summer data and will need the results of the 2003 data, it is not possible to meet the May 2003 deadline for submittal of the report. An extension to February 2004 would allow the Department time to review the 2002 and 2003 data and report those findings.

*Stormwater:* Passage of the stormwater bill would require the Department and Board to initiate rulemaking this fall. Other water related issues before the Natural Resources Committee are (a) Dissolved Oxygen (b) Gulf Island Pond, (c) riverine impoundments and (d) river reclassifications. Public hearings and work sessions on all items are expected to conclude today.

*Budget:* Reductions for fiscal year 03 have been finalized. There is a new gap in the fiscal year 04/05 budget. The Department's target cut is an additional \$120,000. Overall, the Department's General Fund money has been cut a total of 14%.

*EPA:* EPA Regional Administrator Witman will attend a kick off ceremony for a national program aimed at reducing air pollution from idling engine sources. She will recognize Maine's work with school districts to reduce school bus engine idling. The national program provides funding to educate fleet owners on the benefits of reducing engine idling and to help defer the cost of retrofitting vehicles to reduce the amount of pollution from idling engines.

*DEP Director:* David VanWie, Director of the Bureau of Land and Water Quality has submitted his resignation. Mr. VanWie will leave the Department on May 9<sup>th</sup>.

Questions:

Board member Faunce asked if Legislative review of the sand dune rules was unique.

*No, it is not unique, but in this circumstance the Legislature has made the rule major substantive after the Board has conducted public hearings on the matter.*

Board member Ziegler asked if the Department has considered increases to license processing fees to meet the shortfall of the Budget.

*The Department has looked at its current fee structure and compared it with the rest of New England. Fee increases are difficult to achieve and any increase in fees would maintain our current level of service and not provide an improved or increased service delivery to the applicant.*

Deputy Commissioner Barnes introduced Mike Parker from the Bureau of Remediation and Waste Management for an update on the Warren, Oyster River Riffle Range site.

(a) Out of court settlements with Camden National and Steamship have been finalized.

(b) Board members received a copy of the consent agreement which imposed a \$100,000 penalty with all but \$10,000 suspended; Camden National is splitting the escrow account with the Department; \$24,000 has been transferred to the Department from the escrow account. DEP will hold that money for use to remediate the site.

(c) Regular weekly meetings continue. The two developers who had expressed an interest in the property are no longer pursuing this property.

(d) The town attorney is looking at the possibility of relocating the material to a quarry. The Department is not interested in this option because the proposed quarry is within 100 yards of the St. George River and the quarry is not dry.

(e) Persons interested in the possibility of a co-generation plant at the Dragon cement plant and might consider using the Gates material as a fuel source. This is very preliminary.

**B. CHAIRMAN’S COMMENTS:** The Chair gave an update to Board members on a recent meeting with Governor Baldacci’s Director of Boards and Commissions. Ms. Phillips stated explained that upcoming vacancies would be filled as soon as possible and the Governor has received several letters of interest and that current members may need to have their terms extended to consider the Draft General Permit on Finfish Aquaculture. The Chair reviewed the short list of vacancies (due to term expirations) and members who are reaching the end of their first term and may be considered for re-appointment by the Governor.

**C. EXECUTIVE ANALYST COMMENTS:**

Cynthia Bertocci added information on the potential schedule of appointments.

Aquaculture: The Department is working hard to address the comments that were received. The second regular Board meeting in June is still our goal for a vote on the final draft of the General Permit.

Handbook: In response to a request from Board member Virginia Plummer, the Executive Analyst has developed a handbook that serves as a quick reference to the most frequently used provisions of statute and rule governing Board procedures. The handbook is currently being reviewed by the Attorney General’s Office. Board members were asked to provide comments on the draft, and to flag any additional topic areas for inclusion.

<b>D. BOARD CALENDAR:</b>	Reviewed
<b>E. DEPARTMENTAL ORDERS:</b>	Reviewed
<b>F. EXECUTIVE SESSION:</b>	None

## **II CONSENT AGENDA ITEMS**

The Board voted (7-0-0-3) on a motion to approve agenda items 1, 2,3, and 4 as presented

1. GATES FORMED-FIBRE PRODUCTS, INC., Auburn - Administrative Consent Agreement (BAQ)
2. DONAHUE, WILLIAM J., Scarborough – Administrative Consent Agreement (BLWQ-Land)
3. B & H ENTERPRISES, LLC, Wales – Administrative Consent Agreement and Enforcement Order (BLWQ-Water)
4. SPRINGFIELD WATER & SEWER COMMISSION, - Administrative Consent Agreement and Enforcement Order (BRWM-Solid Waste)

## **III. Regular Agenda**

1. CHAPTER 579, CLASSIFICATION ATTAINMENT EVALUATION USING BIOLOGICAL CRITERIA FOR RIVERS AND STREAMS (adoption\*)

The Board voted (7-0-0-3) on a motion to adopt new, Chapter 579 Classification Attainment Evaluation Using Biological Criteria for Rivers and Streams and Erratta Sheet, including the following:

*Section 3G. Professional judgment, subsection (1) ... discriminant models for classification attainment evaluation. **These models are not suitable for use in areas of impoundments that thermally stratify or in areas where there is a net annual deposition of fine sediment.***  
*Professional...*

The vote was taken pursuant to 38 M.R.S.A. Section 341-D and 464.5. Board members Katharine Littlefield, John Tewhey, Virginia Plummer, Richard Wardwell, Jean T. Wilkinson, Irving Faunce and Nancy Ziegler voted to support the motion. Board members John Marsh, Melford Pelletier and Ernest Hilton were absent. Staff member: Susan Davies, Bureau of Land and Water Quality.

2. CHAPTER 100, DEFINITIONS AND CHAPTER 101, VISIBLE EMISSION STANDARDS / REPEAL AND REPLACE (adoption\*)

The Board voted (7-0-0-3) on a motion to adopt amendments to Chapter 100 Definitions and the repeal and replacement of Chapter 101, Visible Emission Standards as presented by Department staff.

The vote was taken pursuant to 38 M.R.S.A. Section 341-D and 464.5. Board members Katharine Littlefield, John Tewhey, Virginia Plummer, Richard Wardwell, Jean T. Wilkinson, Irving Faunce and Nancy Ziegler voted to support the motion. Board members John Marsh, Melford Pelletier and Ernest Hilton were absent. Staff member: Marc Cone, Bureau of Air Quality.